

MARY T. NUESCA
ASSISTANT CITY ATTORNEY

KENNETH R. SO
DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO
MARA W. ELLIOTT
CITY ATTORNEY

CIVIL ADVISORY DIVISION
1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

MEMORANDUM OF LAW

DATE: January 30, 2018

TO: Eduardo Luna, City Auditor

FROM: City Attorney

SUBJECT: Legality of Setting Traffic Citation Issuance Goals

INTRODUCTION

On September 15, 2016, the Office of the City Auditor (Auditor) issued a performance audit on the City of San Diego's programs responsible for improving pedestrian safety. *See* https://www.sandiego.gov/sites/default/files/17-006_performance_audit_ped_safety.pdf. The audit included 18 recommendations related to how the City of San Diego (City) could improve pedestrian safety by using available data to focus engineering, enforcement, and educational resources on locations and behaviors that place pedestrians at the greatest risk.¹

Based on the Auditor's fieldwork, one of the recommendations (Recommendation No. 5) stated in relevant part that the "San Diego Police Department (SDPD) should set a measurable goal to increase enforcement of the driver violations that are most likely to result in pedestrian injuries and fatalities in the City." Initially, as part of the Management Response to the audit, the SDPD agreed with this recommendation. Upon further consideration, however, the SDPD decided not to set a measurable goal involving the issuance of citations for certain traffic violations because of the concern that it could constitute an illegal arrest quota under California Vehicle Code (Vehicle Code) section 41602.

Recommendation No. 5 did not spell out that arrests were the "goal" to be measured, and there are ways to implement Recommendation No. 5 other than by setting arrest quotas.

¹ Among other things, the recommendations in the audit report include having the San Diego Police Department: (1) provide additional training and guidance to officers on traffic violations that are most dangerous to pedestrians and how to focus enforcement on those violations; (2) use data to target the locations where traffic enforcement for pedestrian is most needed and identify specific violations to target in those locations; (3) publicize its targeted enforcements for pedestrian safety and combine it with education and outreach.

However, SDPD interpreted Recommendation No. 5 as requiring arrest quotas and you have requested that the Office of the City Attorney analyze this issue by addressing the following questions.

QUESTIONS PRESENTED

1. Could the SDPD lawfully set mandatory goals requiring that a minimum percentage of citations be issued for certain violations?
2. Could the SDPD lawfully establish a voluntary goal of having a minimum percentage of citations issued for certain traffic violations?
3. Are there any alternative strategies for increasing the enforcement priority of certain violations besides training and directing officers to focus on these violations that would comply with the law prohibiting arrest quotas?

SHORT ANSWERS

1. No. The requirement of having a minimum percentage of citations issued for particular violations would constitute an illegal arrest quota because it would mandate a proportion of citations to be issued relative to other officers, which is prohibited.
2. Likely no. Even a voluntary goal requiring the issuance of a minimum percentage of citations for certain dangerous Vehicle Code violations relative to the citations issued by other officers could constitute an arrest quota because it creates implied pressure to issue a minimum number of citations.
3. Yes. The Chief of Police has the authority under the San Diego Charter (Charter) to control the operation of the SDPD and may set department priorities so long as they do not violate federal or state law. Any particular proposed strategies could be analyzed by this Office on a case-by-case basis.

ANALYSIS

I. A MANDATORY GOAL REQUIRING THE ISSUANCE OF A MINIMUM PERCENTAGE OF CITATIONS FOR CERTAIN VIOLATIONS WOULD CONSTITUTE AN ILLEGAL ARREST QUOTA

The Vehicle Code prohibits the establishment of any policy requiring any peace officer or parking enforcement employees to meet an arrest quota. Cal. Veh. Code § 41602. An arrest quota is defined as follows:

[A]ny requirement regarding the number of arrests made, or the number of citations issued, by a peace officer, or parking enforcement employee, *or the proportion of those arrests made and citations issued by a peace officer or parking enforcement employee*, relative to the arrests made and citations issued by

another peace officer or parking enforcement employee, or group of officers or employees.

Cal. Veh. Code § 41600 (emphasis added).

Although we are aware of no binding case law articulating what constitutes a proportion of citations issued as set forth in this code section,² we can rely upon the rule of statutory construction, which states that a court must always seek to first ascertain and effectuate the legislature's intent. *California Sch. Employees Assn. v. Jefferson Elementary Sch. Dist.*, 45 Cal. App. 3d 683, 691-92 (1975); *Avila v. Citrus Community College Dist.*, 38 Cal. 4th 148, 160 (2006). To ascertain legislative intent, a court will look to the "plain and commonsense meaning" of the words of the statute. *Flannery v. Prentice*, 26 Cal. 4th 572, 577 (2001).

"Proportion" is defined as "the relation of one part to another or to the whole with respect to magnitude, quantity, or degree." Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/proportion> (last visited November 9, 2017). Likewise, "percentage" is defined as "a part of a whole expressed in hundredths." Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/percentage> (last visited November 9, 2017).

Essentially, a percentage is a type of proportion: both express the relation of a part to a whole. For example, 50 percent is the same as saying 50 (part) out of 100 (whole). Given that the term "percentage" is synonymous with the term "proportion," any requirement that an officer issue a certain percentage of citations for a particular offense would violate the prohibition on arrest quotas.

II. EVEN THE ESTABLISHMENT OF A VOLUNTARY GOAL INVOLVING A PERCENTAGE OF CITATIONS ISSUED COULD CONSTITUTE AN ILLEGAL ARREST QUOTA

Although a mandatory minimum percentage citation goal would clearly constitute an illegal arrest quota, the establishment of a voluntary goal is less clear. While a voluntary goal may not expressly violate Vehicle Code sections 41600 and 41602, it could create implied pressure for officers to comply with it, therefore operating as a de facto quota.

We are aware of no case law regarding the establishment of voluntary citation issuance goals. Therefore, we must look to legislative intent. A court will "select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." *People v. Jenkins*, 10 Cal. 4th 234, 246 (1995). Statutes are to be

² We were able to locate one non-binding lower court case that did touch on the issue of proportion. In that case, Whittier police officers sued the City of Whittier for alleged retaliation against them for engaging in protected whistleblower activity, namely complaining about what they believed to be an unlawful citation quota and illegal comparison of officers' performance based on this quota. The trial court denied the City's motion for summary judgment finding that the evidence tended to show the City's actions were unlawful. It said: "Being compared to an average is comparing one's 'proportion of those arrests made and citations issued . . . relative to [those made and issued] by another peace officer.'" *Rivera v. City of Whittier*, No. BC574443, 2017 WL 3579663 (Cal. Super. Ct.) (Trial Order) (July 6, 2017).

interpreted consistent with the apparent legislative purpose and intent that will result in wise policy rather than mischief or absurdity. *American Buildings Co. v. Bay Commercial Construction, Inc.*, 99 Cal. App. 4th 1193, 1200-01 (2002).

The legislative history of Senate Bill 2069, which became codified as Vehicle Code section 41602, expressed a concern that quotas “coerce employees to make judgements based on the pressure of needing to meet a number or face discipline. They prevent an employee from being able to exercise individual judgment based upon a ticket’s merit or lack thereof.” Sen. Comm. on Public Safety, Analysis of Sen. Bill 2069 (2001-2002 Reg. Sess.) Apr. 30, 2002. Even a voluntary goal to issue a certain percentage of citations for certain offenses would be contrary to the legislative intent behind the prohibition on arrest quotas.

Setting a goal to issue a certain percentage of citations for specific offenses, even without an explicit requirement to meet that goal, would tend to pressure individual officers to issue citations consistent with the percentage stated. An officer’s compliance with measurable goals—whether voluntary or mandatory—could reasonably be viewed by the officer as a barometer of the officer’s job performance, especially if it is commented on during a performance evaluation. Therefore, the establishment of a departmental goal, even a voluntary one, is likely a requirement due to this inherent pressure on officers to meet such goals.³

III. THE CHIEF OF POLICE MAY SET DEPARTMENTAL PRIORITIES SO LONG AS THEY DO NOT VIOLATE THE FEDERAL OR STATE CONSTITUTIONS AND PREEMPTIVE STATE LAW

The Chief of Police is authorized to “direct and supervise” police personnel, and retains “all power and authority necessary for the operation and control of the Police Department.” San Diego Charter § 57; *See City Att’y MS-2016-5* (Feb. 12, 2016). As such, she may generally set certain priorities including staffing more officers to conduct traffic enforcement or prioritizing the issuance of citations for certain offenses to protect public safety. As the audit report acknowledged, there are a variety of measurable goals that the SDPD could enact and that appear to already be underway such as increasing targeted enforcement at certain dangerous intersections, increasing manpower for such enforcement efforts, increasing training to officers, and dedicating more time to officers conducting outreach and education to drivers and pedestrians.

³ Even if it was explicitly stated that any SDPD citation issuance percentage goal was not a requirement, the City could still be subject to an as-applied legal challenge on a case-by-case basis if an officer did not get a promotion or was terminated and a court found that the percentage goal was used as a basis for such action. *See Sturgeon v. Bratton*, 174 Cal. App. 4th 1407, 1418 (2009) (A constitutional challenge to a policy may be as-applied, which involves the analysis of a particular case to determine whether the policy has been applied to deprive an individual of a protected right). Even where a police department policy can be technically satisfied without issuing traffic citations, an as-applied challenge to the policy may be upheld if the policy cannot be routinely satisfied in this manner. *Phillipsburg Policeman’s Benevolent Ass’n Local No. 56 v. Town of Phillipsburg*, 2014 WL 8765463 (NJ Sup. Ct., App. Div.) (May 5, 2015) (A police officer’s association challenged the police department’s policy of awarding points for different kinds of traffic and non-traffic arrests, citations, and reports to be issued, and requiring officers to maintain a minimum score).

